

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2450 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GIRDHARLAL PURSOTTAMDAS & CO. & ORS.

Versus

UNION OF INDIA

Appearance:

MR NK MAJMUDAR for Petitioners

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/04/97

ORAL JUDGEMENT

1. The petitioners, three in number, filed this Special Civil Application and prayer has been made to quash and set aside the action of the Railway Administration in sending the goods of the petitioners through the longer routes and further directing them to send the goods of the petitioners only through the shortest route and to charge the fare accordingly on the basis of the shortest route. The next prayer has been

made that the respondents may be directed to pay up the difference of the fare i.e. the difference between the shortest route and the longer route to the petitioners.

2. The learned counsel for the petitioners contended that the decision of the Railway Administration to send the goods of the petitioner by longer route though shorter route was available is arbitrary and unjustified. It has further been contended that it unnecessarily burden the petitioners for the difference of the freight charges of the longer and shorter route. In support of his contention, the counsel for the petitioners placed reliance on the decision of this Court in Special Civil Application No.5702/85 decided on 4-10-1996.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioners and perused the Special Civil Application.

4. The petitioners have not produced anything on record of this Special Civil Application to show that how much amount in excess has been paid by them to the Railway Administration. In the absence of the amount which is sought to be paid in excess of the freight charges to normal freight charges, it is difficult to accept the second prayer.

5. So far as the first prayer is concerned, it is not the case of the petitioners that still the same decision of the Railway Administration is in force and the Railway Authorities are sending the goods of the petitioners by a longer route. After filing of this petition, how the system is going on and further fact whether the petitioners have booked any goods or not, have not been mentioned, and as such, the first prayer also no more survives.

6. Otherwise also, the second prayer deserves no acceptance for the reason that even if it is taken that the petitioners have paid the fare for the longer route i.e. more amount than what it should have been paid by them, then the petitioners are the businessmen and whatever amount is paid in excess by them, the burden thereon would have been passed over by them to the consumers. It is not the case of the petitioners that they have not passed over the burden to the consumers. So for want of sufficient material on record of the difference of the freight charges and the amount in fact paid more, the second prayer is not acceptable. Otherwise also, in case such a prayer is accepted then it will amount to unjust enrichment of the petitioners which

this Court will not permit. The decision of this Court on which the reliance is placed by the petitioners' counsel is clearly distinguishable on facts.

7. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

zgs/-